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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,331	02/27/2004	Brian Levine	LOT920040014US1 (045)	9399
46321 7590 02/02/2009 CAREY, RODRIGUEZ, GREENBERG & PAUL, LLP STEVEN M. GREENBERG 950 PENINSULA CORPORATE CIRCLE SUITE 3020 BOCA RATON, FL 33487				
EXAMINER				
DICKERSON, TIFFANY B				
ART UNIT		PAPER NUMBER		
3623				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/789,331

Applicant(s)

LEVINE, BRIAN

Examiner

TIPHANY B. DICKERSON

Art Unit

3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Introduction

1. This is a Non-Final Action in response to the application filed on February 27, 2004.

Claims 1-13 are pending.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification *shall* conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 6-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In the preamble, claim 6 recites a calendaring system. The body of the claim, however, is not commensurate with understood definition of a system or apparatus. More specifically, the various recited elements fail to provide any structure and merely recite functionally descriptive material, i.e., a "recurrence event" and a "recurrence event modifier", which are essentially modules of computer program code. It is thereby unclear what structure the system is comprised of and how the various features combine to form a system or apparatus.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-5 and 6-8 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-5 are directed to a "method for applying order modifications to recurring event instances", but the claim fails to recite a particular machine. In order for a method to be considered a "process" under § 101, a claimed process must either: (1) be tied to a particular machine or (2) transform an article to a different state or thing *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972). If neither of these requirements is met by the claim, the method is not a patent eligible process under §101 and is non-statutory subject matter.

Claims 6-8 are rejected because the claims recite a "calendar system," but fail to recite the any associated structure of the apparatus. The body of the claims merely recites various data "modules" for performing functions, which constitutes software per se. The claim is thereby directed to non-statutory subject matter.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person *shall* be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) *shall* have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-7 are rejected under 35 U.S.C. 102(e) as being anticipated by *Hall et al.*, U.S. Patent Application 2003/00614333.

Concerning claims 1 and 9, *Hall* discloses a method for applying ordered modifications to recurring event instances, the method comprising the steps of:

identifying an event exception which corresponds to a separately defined recurring event instance (*Hall*, ¶ 0004, i.e., “a complex record typically contains a general rule and one or more exceptions”; and,

modifying at least one property of said recurring event instance based upon said event exception (*Hall*, ¶ 0004, i.e., “[e]xceptions fall into two categories: deletions--when an appointment does not occur, for example, on a given day or for a given week; and modifications--when the time, location, or other data [i.e., other properties] for an appointment on a given day is changed).

Concerning claims 2 and 10, *Hall* discloses the method of claim 1, further comprising the steps of:

further identifying additional event exceptions corresponding to said recurring event instance (*Hall*, ¶ 0004, i.e., “a complex record typically contains a general rule and one *or more* exceptions”; and; and,

for each one of said further identified additional event exceptions, further modifying at least one property of said recurring event instance based upon said one of said further identified additional event exceptions (e.g., using the unique tag disclosed at *Hall*, ¶ 0026).

Concerning claims 3 and 11, *Hall* discloses the method of claim 1, further comprising the step of repeating said identifying and modifying steps for additional ones of the recurring event instances (*Hall*, ¶ 0037, via expander and synch engine).

Concerning claims 4 and 12, *Hall* discloses the method of claim 1, further comprising the steps of: further identifying event exceptions relating to said recurring event instance which have become stale (*Hall*, ¶ 0052, i.e., deleting records if the status is new or unchanged, and the later record has been changed by an exception).

Concerning claims 5 and 13, *Hall* discloses the method of claim 4, wherein said further identifying step comprises the step of further identifying event exceptions whose specified modifications to event properties in said recurring event instance have been obviated by modifications specified in subsequently defined event exceptions (*Hall*, ¶¶ 0038 and 0052).

Concerning claim 6 and 7, *Hall* discloses a calendaring system comprising:

a recurrence event expander (*Hall*, Fig. 8, Ele. 70); and,

a recurrence event modifier coupled to said recurrence event expander (*Hall*, Fig. 2, Ele. 24 connected to Ele. 20).

a modification rule reducer (*Hall*, Fig. 8, Ele. 72, i.e. “retractor”).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability *shall* not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. **Claim 8** is rejected under 35 U.S.C. 103(a) as being unpatentable over *Hall* in view of Official Notice.

The Office takes official notice that at the time of the invention, iCalendar was a standard file format for calendar data exchange, as evidenced by its documentation on Wikipedia, a public internet based encyclopedia, on February 23, 2004 (<http://web.archive.org/web/20040223235035/http://en.wikipedia.org/wiki/ICalendar>).

One of ordinary skill in the art at would have found it obvious to update *Hall* using by iCalendar file formats in order to gain the commonly understood benefits of using widely compatible file types. This would be accomplished with no unpredictable results.

Conclusion

10. The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Schumacher, U.S. Patent 4,942,527; Kasso, U.S. Patent 5,893,073.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TIPHANY B. DICKERSON whose telephone number is (571)270-7048. The examiner can normally be reached on M-F 7:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Boswell can be reached on (571)272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TIPHANY B. DICKERSON
Examiner
Art Unit 3623
February 2, 2009
/Beth V. Boswell/

Supervisory Patent Examiner, Art Unit 3623